

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

6

7 SEARS HOLDING CORPORATION,

8

9 Debtor.

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12 U.S. Bankruptcy Court

13 300 Quarropaas Street

14 White Plains, NY 10601

15

16 December 18, 2018

17 10:50 AM

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19 B E F O R E :

20 HON. ROBERT D. DRAIN

21 U.S. BANKRUPTCY JUDGE

22

23

24

25 ECRO: NAROTAM RAI

1 HEARING Re Hearing to Approve Sale of Sears Home Improvement
2 Business, (D) Approving Form and Manner of Notice of Sale,
3 Auction, and Sale Hearing, (E) Approving Assumption and
4 Assignment Procedures, (II) Approving the Sale of Sears Home
5 Improvement Business in Accordance with the Stalking Horse
6 Agreement and (III) Granting Related Relief (Related Doc #
7 450, 775, 1035)

8
9 HEARING Re Objection to Cure Cost in the Proposed Cure
10 Amount for Contract A of Andrea McSorley (related
11 document(s) 1035, 901)

12
13 HEARING Re Objection to Motion (Limited Objection and
14 Reservation of Rights of Light 125 James West LLC to the
15 Debtors (1) Motion for Entry of an Order (I)(A) Approving
16 Bidding Procedures for Sale of Sears Home Improvement
17 Business, (B) Approving Stalking Horse Bid Protections, (C)
18 Scheduling Auction for and Hearing to Approve Sale of Sears
19 Home Improvement Business, (D) Approving Form and Manner of
20 Notice of Sale, Auction, and Sale Hearing, (E) Approving
21 Assumption and Assignment Procedures, (II) Approving the
22 Sale of Sears Home Improvement Business in Accordance with
23 the Stalking Horse Agreement, and (III) Granting Related
24 Relief, and (2) Notice of Assumption and Assignment in
25 Connection with Sale of Sears Home Improvement Business)

1 (related document(s)450)

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3 HEARING Re Objection to Motion Certain Texas Taxing Entities

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Limited Objection to Debtors Motion for Entry of Order

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Approving the Sale of Sears Home Improvement Business in

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Accordance with the Stalking Horse Agreement and Granting

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Related Relief (related document(s)450)

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HEARING Re Statement Withdrawal of Limited Objection

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(related document(s)1133)

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HEARING Re Objection to Motion Limited Objection and

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Reservation of Rights

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HEARING Re Notice of Agenda of Matters Scheduled for Hearing

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on December 18, 2018 at 10:00 a.m.

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Transcribed by: Sheila Orms

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1 P R O C E E D I N G S

2 THE COURT: Okay. In Re Sears Holding
3 Corporation, et al.

4 MR. SCHROCK: Good morning, Your Honor.

5 THE COURT: Morning.

6 MR. SCHROCK: Ray Schrock of Weil Gotshal & Manges
7 on behalf of the debtors. I'm here with my partners today
8 Jacqueline Marcus and Sunny Singh. Thanks for taking the
9 time for us today, Judge.

10 Before we get started with the primary issue on
11 the agenda today which is the SHIP sale, the approval of
12 that, we wanted to give the Court and parties in interest an
13 update on the company sale process which is ongoing and --

14 THE COURT: The overall sale process.

15 MR. SCHROCK: The overall sale process, yes, Your
16 Honor, as well as -- I think Mr. Basta on behalf of the
17 restructuring subcommittee wanted to give parties an update
18 on just a status of their investigation to date, and the
19 committee may want to say a few words as well.

20 THE COURT: Okay.

21 MR. SCHROCK: So, Your Honor, start with the high
22 points. I think and very good news, that the debtors along
23 with the parties in interest, the key parties in interest
24 including the committee, the DIP lenders, and other
25 stakeholders have been working together, we believe, very

1 well.

2 There's been a high level of communication over
3 the last several weeks, and since the time we first began
4 embarking on the global sale process. We had a deadline of
5 September 15th to select a stalking horse for the debtor's
6 retail stores. We have not selected a stalking horse at
7 this time, and as Your Honor may recall, we were soliciting
8 going concern bids, we were soliciting bids for particular
9 assets and divisions of the company, we were soliciting
10 liquidation, liquidator bids, and we're also comparing those
11 to a company advisor wind down pursuant to an arrangement
12 that had also been approved by the Court.

13 But that process remains very competitive at the
14 moment, and the debtors are working toward the December 28th
15 binding bid deadline that has been established by the Court
16 under the global asset sale procedures.

17 We've been moving the retail store sales process
18 forward at the direction of the restructuring committee, and
19 we've been meeting telephonically, it's an enormous amount
20 of work, but we've been meeting telephonically or in person
21 with the restructuring committee at least three or four
22 times a week, sometimes more, in person or telephonically.

23 We've been in regular consultation with all of the
24 defined consultation parties, the committee, the DIP
25 lenders, we've had multiple calls and meetings, and people

1 have spent some very long days at our offices over the last
2 several weeks. But there's really just daily communication
3 as we're moving this forward and we're taking a lot of care
4 to make sure we're running a very transparent process.

5 The debtor's investment banker, Lazard has sent
6 the global bidding procedures process letter in accordance
7 with the Court's order with over 70 potential bidders to
8 solicit indications of interest. In addition, we've sent
9 out an addendum to that letter for guidelines for submitting
10 liquidation bids to several liquidation bidders, which
11 remain in the process.

12 We've received indications of interest for the
13 retail stores including those -- I'm sure everyone's aware,
14 there's been a -- one bid is for a going concern sale of the
15 company that's been received from ESL Investments. We've
16 also received a number of so-called liquidation bids, both
17 on an equity basis and an advisory basis. We've also
18 received comfort from Abacas, the company's existing
19 liquidator about their ability to handle additional GOB
20 sales.

21 We've also received multiple indicative bids for
22 particular assets and divisions of the company, including
23 Parts Direct, Sears Home Services, Sears Automotive, Sears
24 Home & Business Franchises, credit card claims, as well as
25 other assets on a going concern basis.

1 But we intend to work with parties and continue to
2 push very hard to ensure that everyone has a reasonable
3 opportunity to submit a qualified bid by December 28th.

4 Just a quick word on the real estate process. We
5 have been submitting or soliciting bids for real estate
6 assets pursuant to a separate process letter. The debtor's
7 retail advisor who is Jones Lang LaSalle Americas has
8 distributed the real estate process to approximately 300
9 potential bidders. We have also received some real estate
10 bids.

11 December 28th is the deadline for indicative bids
12 on the debtor's real estate assets. We have not yet set a
13 firm deadline on real estate assets. And how this process
14 interacts, we've received some questions, how does the real
15 estate process interact with the overall process.

16 We will evaluate real estate bids if they come in
17 in conjunction if the debtors choose or pursue a going
18 concern sale route, but as we -- as I indicated on the
19 record at the last hearing for the global sales process we
20 thought it was frankly impossible to evaluate what could be
21 hundreds of real estate bids in conjunction with a going
22 concern process, so we -- what we're doing is we have
23 appraisals, including new appraisals that will be
24 evaluating, should we want to compare those bids to the
25 going concern, and we'll have indications of interest that

1 if we want to develop those in conjunction with the
2 consultation parties we'll certainly be doing that.

3 THE COURT: And the liquidation bids don't include
4 real estate?

5 MR. SCHROCK: Some of them do, Your Honor.

6 THE COURT: Some do, some don't.

7 MR. SCHROCK: Some do, some don't, that's correct.

8 THE COURT: So I guess you're using that same data
9 to help evaluate --

10 MR. SCHROCK: Exactly.

11 THE COURT: -- those that do include.

12 MR. SCHROCK: Exactly.

13 THE COURT: And don't because you have to compare
14 them.

15 MR. SCHROCK: Right.

16 THE COURT: Okay.

17 MR. SCHROCK: And, you know, one of the benefits I
18 would say of running this process at this point, there's
19 been literally like a multi-year real estate process that's
20 been ongoing with Sears as its continued to shrink its
21 footprint, so there's a lot of infrastructure data that's
22 available even on a prepetition basis, related to the value
23 of the company's real estate.

24 But let me just address how we're moving the
25 process forward. Under the terms of -- you know, our DIP

1 financing agreements as well as the bidding procedures
2 order, we have this deadline of December 28th. And we've
3 determined that it is prudent to continue seeking bids until
4 December 28th.

5 We've also determined that the debtors believe it
6 is appropriate to commence going out of business sales at a
7 number of other stores. We don't have that final number set
8 yet, Your Honor, but we expect to do that and we've been
9 working with the consultation parties in that over the
10 coming days. So I would expect there will be a notice filed
11 with the Court about a small -- a group of stores that we
12 will commence GOB processes for at the end of the year.

13 THE COURT: And that process would be governed by
14 the existing GOB order?

15 MR. SCHROCK: That's right, Your Honor.

16 THE COURT: Which includes consultation.

17 MR. SCHROCK: It does include consultation parties
18 and rights.

19 THE COURT: Okay.

20 MR. SCHROCK: The -- we also, you know, as
21 required under the DIP credit agreement, and frankly in
22 consultation with other parties we have begun to take what
23 we think are responsible as prepatory steps in the event the
24 debtors do have to commence a full wind down of the chain.
25 Other -- you know, should we pursue anything other than a

1 full chain going concern sale.

2 So there could be a full chain going concern sale,
3 there could be multiple divisions if we evaluate the -- some
4 of the parts where you could see many divisions sold as a
5 going concern. There could be some stores that are sent
6 into GOB, but then we choose to have an auction for those
7 stores separately in January. But we're really focused on
8 with all the parties, the key parties in interest on this
9 December 28th day.

10 And under the global asset sale procedures order,
11 we have to make a determination by January 4th as to whether
12 someone is a qualified -- if somebody's going to be a
13 qualified bidder, there's then contemplated to be an auction
14 on January 14th, and moving toward a sale hearing at the end
15 of the month.

16 This time period between the 28th and the 4th is
17 going to be a key period for the company. If we receive an
18 actionable going concern full chain bid where I think we're
19 going to be charging forward toward that auction date of
20 January 14th. If we do not receive an actionable going
21 concern bid for the full chain or an actionable bid as
22 otherwise not qualified we'll have to pivot to one of the --
23 to the division sales or if we determine the division sales
24 are actually and frankly better, we'll pivot to one of the
25 division sales, and we could see that auction date pushed

1 out by a couple of weeks, combined with a company making
2 decisions to commence GOBs at a number of stores and
3 actually announce that during the early part of January.

4 So this is really -- obviously this is a very
5 critical time for the company and, you know, I just want to
6 continue to stress it's a very active fluid process and it's
7 -- I think all the parties are working extremely hard to
8 make sure that we have as many qualified bids as possible
9 and we encourage everyone to take that December 28th date
10 extremely seriously.

11 THE COURT: Well, let me -- I guess let me make
12 sure I understand that and we need to reiterate that point.
13 I think what I'm hearing you saying is that you're doing
14 contingency planning in case you don't have a comprehensive
15 proposal or set of proposals --

16 MR. SCHROCK: Right.

17 THE COURT: -- that you can recommend to the Court
18 in -- with a potential auction to take place on January
19 14th, and to know that, you need to have the parties put
20 their best proposals forward by December 28th.

21 MR. SCHROCK: That's right. That is the date,
22 Judge.

23 THE COURT: And if they don't, they run the risk
24 that they're frozen out.

25 MR. SCHROCK: That's correct.

1 THE COURT: Because then you're doing basically
2 piecemeal work.

3 MR. SCHROCK: That's correct.

4 THE COURT: So if anyone wants to make either a
5 comprehensive bid, whether it's on a going concern basis or
6 a liquidation basis, or a significant enough bid so that
7 when combined with other bids, Division I, Division II,
8 Division III --

9 MR. SCHROCK: Correct.

10 THE COURT: -- they need to do that by December
11 28th.

12 MR. SCHROCK: That's well said, thank you.

13 THE COURT: And if I can go further. It appears
14 from what you're saying that there are credible serious
15 parties that are pursuing those types of proposals --

16 MR. SCHROCK: Uh-huh.

17 THE COURT: -- The debtors and their key
18 constituents, the DIP lenders, the committee are working
19 with them and because that is such an active process at this
20 point, the debtors have chosen not to pick a stalking horse.

21 MR. SCHROCK: That's right, Judge. And we feel
22 that the process at this point it is competitive. There
23 wasn't really a need to give anyone stalking horse
24 protections at this point in order to foster, you know, that
25 push towards December 28th.

1 THE COURT: All right. I guess the last point I
2 want to reiterate, although I don't suggest that you're
3 saying anything of the contrary, is that during the next ten
4 days the debtors have no favorites, they're actively
5 considering going concern proposals, they're actively
6 considering going -- global, excuse me, not going, global
7 liquidation proposals.

8 MR. SCHROCK: Yes.

9 THE COURT: And there are potentially more than
10 one of those, and so therefore, you know, they're going to
11 be evaluating those --

12 MR. SCHROCK: Yes, there are multiple liquidation
13 proposals.

14 THE COURT: And then, of course, there are perhaps
15 large pieces that are being bid on, not globally, but if you
16 aggregate them, there may be a global transaction or near
17 global transaction if you (indiscernible) all of those.

18 So all of those again need to be made as best as
19 they can by the 28th. I certainly don't fault the debtors
20 for considering contingency planning if none of those pans
21 out, but one hopes they will, particularly knowing that
22 that's going to be their last shot at it.

23 The only other thing I'd like to say is that
24 certainly from the universe of liquidators out there, which
25 is a small but active, acknowledging the obvious, I don't

1 think I'd have to give them any warning about collusion.
2 But there is inevitably because of an institution's
3 familiarity with this company the possibility that people
4 may be wearing more than one hat and whether those are
5 potential lenders to a bidder or the like, they need to be
6 very careful about building walls so that this process
7 really can be fair.

8 I take that very seriously and counsel for people
9 that might be wearing more than one hat, should make sure
10 that their clients take it seriously.

11 MR. SCHROCK: Thank you, Judge.

12 Your Honor, I just as a final note before I cede
13 the podium to Mr. Basta that we talked previously about
14 beginning work around a Chapter 11 plan, regardless of the
15 ultimate path chosen. We have been working very hard on
16 that among the debtors. And regardless of the ultimate path
17 chosen, whether it's, you know, division sales or a full
18 chain that we expect to initiate those discussions with
19 stakeholders in January and push that process forward
20 expeditiously.

21 We are very mindful of the very significant
22 administrative costs that are incurred in this case, and we
23 think that moving the case toward confirmation as quickly as
24 possible and given that we do have a \$240 million reserve to
25 ensure plan confirmation is something that we think all

1 parties should be focused on. But, you know, in general
2 we're -- you know, we're grateful for the cooperation and
3 support of the company's key constituents and we're working
4 very hard.

5 THE COURT: Okay.

6 MR. SCHROCK: Thank you.

7 THE COURT: Thank you.

8 MR. BASTA: Good morning, Your Honor, Paul Basta
9 from Paul Weiss.

10 THE COURT: Good morning.

11 MR. BASTA: As Your Honor knows we represent the
12 restructuring subcommittee and the restructuring
13 subcommittee's mandate is backward looking and forward
14 looking. We're charged with investigating and pursuing
15 claims arising out of prepetition affiliate transactions, of
16 which there were many. And going forward, our subcommittee
17 is required to approve any transaction that includes a
18 release or credit bidding or that invokes affiliate matters.

19 Our work has become very intense, especially in
20 light of the fact that the ESL bid that is publicly filed
21 provides for credit bidding and provides for a release. The
22 restructuring committee therefore has been working extremely
23 hard. It has retained Paul Weiss and Evercore and A&M and
24 Stout on the real estate side to really dig into these
25 transactions.

1 Our committee members, Mr. Karr (ph) and Mr.
2 Tranzier (ph) are not only on almost daily calls with the
3 full restructuring committee on the update of the case, but
4 we are speaking with them three times a week, and have had
5 several all day weekend sessions to review detailed work
6 from both Evercore and A&M about what we are investigating.

7 We submitted document requests to the debtors,
8 ESL, Centerview, Cushman & Wakefield, Fairhome (ph),
9 Ceritage (ph) and Wachtel Lipton and we issued a subpoena
10 and received documents from Duff and Phelps who provided
11 solvency opinions.

12 We have received over 1.1 million documents
13 totaling over 9.3 million pages and those include privileged
14 communications from the company. We have been doing the
15 privilege review of those documents and we have provided the
16 creditor's committee with 64,000 documents and over 2.3
17 million pages and we are working cooperatively with the
18 committee.

19 We have conducted two informal meetings and nine
20 in-depth interviews with key witnesses, and those have been
21 transcribed. And those interviews have been conducted with
22 the creditor's committee with the protocol for dealing with
23 privilege.

24 The interviews have been of Mr. Riecker, the CFO
25 of Sears, Ann Reese, who's a director and a member of the

1 related party transactions committee that approved the
2 affiliate transactions; Naren Sinha, who is a vice-president
3 in finance at the company; Kunal Komyatti (ph) who's an ESL
4 representative and a Sears director; Scott Charles, who's a
5 partner at Wachtel Lipton; Jeff Scheidemeyer (ph), who is a
6 managing director at Duff & Phelps who gave the solvency
7 opinions; Mark Puntiss (ph), who is the co-head of debt
8 advisory in the restructuring group at Centerview, which
9 advised the related party transactions committee; Edward
10 Lampert (ph) which was in Miami last week; and Richard
11 Latella (ph) from Cushman and Wakefield who provided the
12 valuation and appraisal work on the properties that were
13 subject to the Ceritage transaction.

14 We have three additional interviews that are
15 coming up with the company's former CFO, a gentleman who
16 does the real estate work at the company, and Mo Maji (ph)
17 from M3.

18 So we are hard at work and we're very mindful of
19 the fact that the ESL bid contains these provisions, and the
20 reason why we're working so hard is to be able to provide
21 the Court with input should it become necessary regarding
22 how we value the estate causes of action, and if necessary
23 pursue those causes of action.

24 THE COURT: Okay. Obviously there's a lot of time
25 pressure on this because normally this type of work is often

1 done after a plan is confirmed, but I appreciate why it's
2 being done now and the need to do it. There are ways to
3 finesse a credit bid to avoid this, but I gather from what
4 you've told me that ESL is not taking that route.

5 MR. BASTA: We would love to finesse it, Your
6 Honor.

7 THE COURT: Right. Okay. I mean, I don't want to
8 be cryptic, I mean you want to finesse it is to say that if
9 it turns out later that the claim can't be bid then you back
10 it up with cash, but absent a modification of the bid, this
11 is what needs to be undertaken.

12 MR. BASTA: Thank you, Your Honor.

13 THE COURT: And it needs to be undertaken also if
14 -- to evaluate and compare this bid to alternatives where --

15 MR. BASTA: I think that's very important, Your
16 Honor, because in addition to doing the work on the
17 prepetition transactions, our -- Paul Weiss and our
18 financial advisors have been invited to and have been
19 participating in the full restructuring committee calls,
20 because if there is a differential in value between what the
21 company has and what alternative exists it's -- you need to
22 assess the value of the litigation, and you need to assess
23 the contribution of what the difference is and that has
24 contributed to the time consuming nature of the project.

25 THE COURT: Okay.

1 MR. QURESHI: Good morning, Your Honor. For the
2 record, Abid Qureshi, Akin Gump Strauss Hauer and Feld on
3 behalf of the official committee of unsecured creditors.

4 If I could, Your Honor, just a few words from the
5 committee's perspective on the ESL credit bid. As Your
6 Honor is aware, ESL chose to publicly file its bid and as
7 you heard from Mr. Basta, in addition to seeking to credit
8 bid \$1.8 billion of claims, ESL is also seeking a release.
9 And this is among other concerns that the committee has with
10 the ESL bid, certainly a central one.

11 We have alongside the restructuring committee been
12 working around the clock, given the exigencies of this case
13 to get that investigation done, as Mr. Basta told the Court.
14 A whole bunch of interviews have been conducted including of
15 Mr. Lampert.

16 On one point though I will be a little more direct
17 than Mr. Basta was on behalf of the restructuring committee,
18 although the investigation is ongoing, and although the work
19 is by no means done, from the committee's perspective, Your
20 Honor, we believe that we know enough at this stage, that
21 we've had enough access to witnesses, and enough access to
22 documents to have concluded that in the event by the bid
23 deadline of December the 28th ESL puts in another bid that
24 includes a credit bid, and that it includes a release, the
25 creditor's committee will object to ESL's ability to credit

1 bid.

2 We believe, Your Honor, that at this stage of the
3 investigation there exists viable colorable claims against
4 ESL, and we hope that to the extent ESL does persist in a
5 credit bid that they take the obvious way out, which is to
6 backstop that credit bid with cash.

7 THE COURT: Or to pay for the release.

8 MR. QURESHI: Or to pay for the release,
9 absolutely.

10 THE COURT: And I guess everyone can take some
11 comfort from the 2nd Circuit's guidance in Orion Pictures
12 that a sale is a summary proceeding, a judge can't
13 predetermine with perfection issues like this in that
14 context, he or she just needs to evaluate whether the
15 consideration makes sense on the facts.

16 MR. QURESHI: Sure. And, Your Honor, while if
17 there is no credit bid the investigation will play out as it
18 should over a longer period of time --

19 THE COURT: Right.

20 MR. QURESHI: -- before any claims are brought.

21 If our hand is forced given the timeframe here, we
22 absolutely think that the claims we have identified so far
23 are viable, we think they're colorable, and they're
24 certainly legitimate. Your Honor --

25 THE COURT: I mean, that's all part of the mix as

1 I said.

2 MR. QURESHI: Sure.

3 THE COURT: I'm sure ESL's counsel will disagree
4 with you and he doesn't need to stand up to say that, but
5 obviously there's been a lot of attention paid to the facts
6 and all I can say is again, December 28th is an important
7 date and everyone should put their best foot forward and
8 their best offer forward before then.

9 MR. QURESHI: We completely agree with that, Your
10 Honor. We certainly hope for great things on the 28th.
11 That having been said, we were encouraged to hear Mr.
12 Schrock reaffirm on the record that the debtors are doing
13 the preparatory work that is necessary in order to pivot to a
14 GOB process if there is not a viable going concern bid. As
15 Your Honor's heard --

16 THE COURT: Well, again it's not just viable going
17 concern, it's a viable bid for the company as a whole, in
18 essence --

19 MR. QURESHI: Right.

20 THE COURT: -- which could be a liquidation bid
21 too.

22 MR. QURESHI: Correct. As Your Honor's heard from
23 the committee's perspective before, we are very concerned
24 about the cash burn and so that decision the path that these
25 debtors are going to take needs to be made promptly after

1 the 28th.

2 And to that end, Your Honor, we'd like to suggest
3 an early January check-in date with the Court, so that all
4 of the parties in interest can receive an update on what
5 transpired on the 28th and what the path going forward looks
6 like.

7 THE COURT: Well, we had reserved January 10th for
8 a stalking horse hearing, so that date is free. If the
9 parties think an earlier date makes sense, you can talk to
10 Ms. Li. I'm sure I can make time for you.

11 MR. QURESHI: Okay. Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. BROMLEY: Good morning, Your Honor, James
14 Bromley of Cleary Gottlieb on behalf of ESL, I'm sure you're
15 shocked I'm standing up.

16 THE COURT: Well, I tried to make it so you
17 wouldn't have to.

18 MR. BROMLEY: Well, Your Honor, there's a couple
19 of things I would like to say. First of all, Mr. Qureshi
20 did make a particular point to say that ESL's indicative bid
21 on a going concern basis was made public. I should clarify
22 for the Court that there were certain requirements under the
23 securities laws, in light of Mr. Lampert and ESL's ownership
24 that was required under Rule 13(d), so that's why --

25 THE COURT: Right.

1 MR. BROMLEY: -- we sent it out to the public.

2 THE COURT: Right. But you don't have to send out
3 every negotiation thereafter.

4 MR. BROMLEY: We are not, Your Honor.

5 THE COURT: Okay.

6 MR. BROMLEY: We are not. It is important,
7 though, to note that we are standing here not at all
8 surprised that Mr. Qureshi has confirmed his prior prejudice
9 against my client. And so I'm not surprised at that, but it
10 is important to note that ESL was putting enormous effort
11 into trying to put together a going concern bid that
12 satisfies all the requirements that have been set forth in
13 the bidding procedures order, and accommodates all the
14 issues that Mr. Schrock has mentioned.

15 We are not sitting here hearing anything other
16 than what it is being said. That being said, Your Honor, a
17 going concern bid for the Sears business is a critical
18 opportunity to save 50,000 jobs, to save an American icon.
19 ESL has been behind Sears for 15 years as a true believer
20 and continues to believe in the future of Sears. And it is
21 with that in mind that ESL has been putting together the
22 efforts behind the going concern bid. We intend to commit
23 ourselves 150 percent over the next ten days and hope to be
24 standing here in front of you, Your Honor, to look for the
25 approval of a going concern bid.

1 THE COURT: Okay.

2 MR. BROMLEY: Thank you.

3 THE COURT: I hope so, too.

4 All right. So I think that probably ends the
5 status conference portion of this hearing, and then we have
6 the debtor's motion for approval of a discreet transaction
7 for the SHIPS business, which I previously approved the
8 procedures for.

9 MS. MARCUS: Good morning, Your Honor, Jacqueline
10 Marcus, Weil Gotshal & Manges on behalf of Sears Holdings
11 Corporation and its affiliated debtors.

12 As you indicated, Your Honor, we're here this
13 morning on the sale motion for approval of the sale of the
14 SHIP business. On November 16th you approved the bidding
15 procedures with respect to that sale. The bidding
16 procedures order established December 11th, 2018 at 4 p.m.
17 as the deadline for other bidders to submit qualified
18 competing bids.

19 As indicated in the notice of cancellation of
20 auction that we filed on December 12th, the debtors did not
21 receive any qualified competing bids. Consequently, the
22 auction was canceled and the debtors and Service.com have
23 proceeded towards this hearing seeking in accordance with
24 the bidding procedures order approval of the sale to
25 Service.com.

1 The asset purchase agreement is summarized in the
2 sale motion and a copy of the asset purchase agreement was
3 annexed as Exhibit B to the motion. An amendment to the
4 asset purchase agreement dated November 13th was filed with
5 the Court as Exhibit C to the debtor's response in support
6 of entry of the bidding procedures order.

7 The asset purchase agreement provides for the sale
8 of the debtor's home improvement business for a purchase
9 price of \$60 million. The buyer's payment of cure costs
10 with respect to assumed executory contracts up to \$5
11 million, the buyer's assumption of certain liabilities
12 relating to ship employees up to a maximum of \$2 million,
13 and the buyer's assumption of certain other liabilities.

14 In accordance with the bidding procedures order on
15 December 13th, the debtors filed the notice of assumed and
16 assigned contracts designated by Service.com in connection
17 with the sale of Sears home improvement business. That is
18 ECF No. 1208.

19 Yesterday afternoon the debtors filed their
20 response in support of the sale motion, which includes as
21 Exhibit C a chart of the status of the objections received
22 as well as clean and blackline copies of their other revised
23 sale order.

24 And I apologize, Your Honor, that the response was
25 filed late, we were trying to get through as many of the

1 objections as we could before we filed our response.

2 The additional revisions to the order reflect the
3 results of the debtor's negotiations with certain of the
4 objectors, as well as other consulting parties. Since
5 filing our response yesterday afternoon, we have continued
6 to work to resolve the remaining objections, and we have a
7 further revised order, which I would like to hand up to the
8 Court if I may.

9 THE COURT: Okay. That's fine. I've been through
10 the blackline that I got yesterday.

11 MS. MARCUS: Your Honor, would you prefer then
12 that I just give you the incremental blackline, which --

13 THE COURT: Yes.

14 MS. MARCUS: -- just has a few changes?

15 THE COURT: Yes, thank you.

16 MS. MARCUS: As reflected, Your Honor, on Exhibit
17 C to our response we received 12 objections to the motion.
18 None of the objections relate to the merits of the proposed
19 sale of the ship business to the buyer or question whether
20 the sale is in the debtor's best interests. Instead, the
21 objections all relate to the proposed assumption and
22 assignment of various executory contracts and leases to the
23 buyer.

24 As a result of clarifications provided by the
25 debtors and the buyer, four of the objections have been

1 formally withdrawn. Those are, if you have Exhibit C, Your
2 Honor --

3 THE COURT: Got it.

4 MS. MARCUS: -- do you have Exhibit C, the chart?

5 THE COURT: Yes, I do.

6 MS. MARCUS: So those are number 1133, the
7 objection filed by ADT; number 1142, the objection filed by
8 Seico (ph); 1143, the objection of Automotive Rentals; and
9 1145, the objection filed by Felix Calls, LLC (ph).

10 THE COURT: Okay.

11 MS. MARCUS: In addition, I thought I was going to
12 report that the objection filed by the Texas taxing
13 authorities had been resolved with the addition of some
14 language to the order that I just handed you, Your Honor,
15 but I've been told that the Texas taxing authority would
16 still like to address the Court.

17 If you're looking at the incremental blackline, we
18 added paragraph 39 which says that nothing in this order
19 shall affect the priority of the ad valorem tax liens if
20 any, which may arise during the pendency of the debtor's
21 Chapter 11 cases. When I get through, I think the Texas
22 authorities would like to respond.

23 THE COURT: Okay.

24 MS. MARCUS: Two of the objections have become
25 moot. Those are numbers 1193 filed by Phillips Edison and

1 Company and Levin Management. And number 1246, filed by
2 William and Andrea McSorley they've become moot because the
3 debtors have confirmed that they are not assuming and
4 assigning the applicable contracts that are subject of the
5 objections.

6 All five of the remaining objections relate to
7 questions about the required amount of cure costs to be paid
8 in connection with the assumption and assignment of the
9 agreements.

10 With respect to the four landlord objections, the
11 debtors and the buyers are working -- the debtors and the
12 buyer are working with the counterparties and have agreed to
13 adjourn the hearing with respect to the applicable cure
14 amount as contemplated in the bidding procedures order. And
15 those are numbers 1128, 1132, 1134, and 1146.

16 With respect to the remaining objection, that's
17 the objection filed by Robertson Heating and Supply --

18 THE COURT: Well I think you also added some
19 language on the non-cure objection of (indiscernible).

20 MS. MARCUS: Yes, we did, yes, we did, Your Honor,
21 thanks for pointing that out.

22 So we resolved their language objections and the
23 question with respect to those is simply the amount of the
24 cure at this point.

25 THE COURT: Okay.

1 MS. MARCUS: With respect to Robertson Heating and
2 Supply's objection we still have a dispute, and as reflected
3 in the notice of designated contracts in the event that the
4 buyer cannot reach a satisfactory resolution of the cure
5 costs with Robertson prior to the closing, the buyer may
6 elect not to take an assignment of that agreement. And that
7 was number 1161.

8 The debtors have also been working with the
9 Consumer Privacy Ombudsman appointed by the U.S. Trustee,
10 Elise Frejka to determine what steps needed to be taken in
11 connection with the ship sale and the personally
12 identifiable information.

13 Yesterday afternoon Ms. Frejka filed her report
14 with the Court where she made certain recommendations.
15 Paragraph 29 of the proposed order provides that the buyer
16 will comply with the terms of the report, and the buyer has
17 confirmed that they've reviewed the report and they're fine
18 with it and intend to comply with her recommendations.

19 THE COURT: Okay.

20 MS. MARCUS: So we've gotten through the filed
21 objections. In addition to the filed objections, Your
22 Honor, we have also been trying to work through some
23 informal requests made by various parties in interest.

24 The Court will note that paragraph 30 of the
25 proposed order we added the -- paragraph 30 is the one that

1 deals with the allocation of the postings of the sale
2 between collateral and I'll call it previously unencumbered
3 collateral.

4 In the version that was filed with our response we
5 added the prepetition second lien 2010 indentured trustee as
6 an additional party to be consulted in connection with the
7 allocation methodology.

8 We have also been requested to add in the
9 prepetition IP GL agent, and the prepetition second lien
10 credit agreement agent as parties who would participate in
11 those discussions. The debtors are amenable to including
12 those parties in the language, but we've not been able to
13 get counsel for the creditor's committee to agree. As far
14 as I'm concerned, Your Honor, I leave that to you.

15 THE COURT: Well, this is all subject to the
16 underlying orders that I've already entered in this case,
17 and the DIP order, the second DIP order. It's just
18 consultation, it's not --

19 MS. MARCUS: That's correct. And if the parties -
20 - it's everybody, so now we have probably five or six
21 different parties who want to weigh in on that and if the
22 parties --

23 THE COURT: And also --

24 MS. MARCUS: -- cannot agree --

25 THE COURT: -- their credit agreements.

1 MS. MARCUS: Yes. If the parties can't agree --

2 THE COURT: So I would assume it's just to make
3 sure that the distribution doesn't violate any of those
4 orders and agreements.

5 MS. MARCUS: That's exactly right, Your Honor.

6 THE COURT: Okay. It's not an invitation for a
7 free for all to start over.

8 MS. MARCUS: Oh, I hope not.

9 THE COURT: Well, it's not. Okay.

10 MS. MARCUS: So that's where we are with respect
11 to that one.

12 And then another informal objection that we've
13 been trying to work out and I'm not quite sure if we have
14 yet is an objection that was asserted by counsel for
15 Citibank which has our -- the ship credit card program
16 agreement. We've confirmed -- Citibank wanted to make sure
17 that there's nothing in the proposed order that prejudices
18 their rights vis a vis that existing credit card agreement.

19 We are not proposing to assume and assign that
20 agreement to Service.com, and therefore, our view is that
21 there's nothing in the order that prejudices Citi's rights.
22 Service.com is prepared to agree on some language that
23 preserves Citi's rights, but we're not quite there with the
24 actual words. And we were fairly close at the beginning of
25 the hearing -- are we there yet?

1 UNIDENTIFIED: Yeah, I think so.

2 MS. MARCUS: We are?

3 UNIDENTIFIED: If we can read it into the record
4 then, the entire --

5 MS. MARCUS: Someone has to give it to me then.

6 Sorry, Your Honor, if I may have a moment.

7 THE COURT: Okay.

8 (Counsel confer)

9 MS. MARCUS: It's a little bit long, so bear with
10 me. We're going to add a new paragraph at the end of the
11 order, which says notwithstanding anything to the contrary
12 in this order, including with respect to the sales free and
13 clear pursuant to Section 363(f) of the Bankruptcy Code
14 contemplated hereby, and unless otherwise agreed by buyer
15 and Citibank, N.A. (Citi).

16 X, if any of the debtor's interests in any
17 property jointly owned by Citi and the debtors is
18 transferred under this order, nothing herein shall impair,
19 invalidate, limit, waive, or forfeit, or otherwise render
20 ineffective any right or interest of Citi arising under or
21 recognized by that certain second amended and restated
22 program agreement, the Citibank credit card program
23 agreement, dated as of October 3, 2018 by and amongst Sears
24 Roebuck & Company, Sears brands business unit corporation,
25 the other Sears parties as defined therein that are parties

1 thereto, collectively the Sears card program parties and
2 Citi with respect to any such property transferred pursuant
3 to this order.

4 And with respect to such jointly owned property,
5 if any, the buyer shall remain bound by any restrictions on
6 the use, disposition or other treatment of such property as
7 if buyer were a Sears card program party.

8 Y, notwithstanding the grant by Citi of any
9 license or other right to use any intellectual property as
10 defined in the Citibank credit card program agreement to
11 buyer, if and to the extent that any such licenses granted
12 the Sears card program party shall continue to be bound by
13 the restrictions and limitations in the Citibank credit card
14 program agreement with respect to any intellectual property.

15 And Z, no sale, license or grant of right to use
16 of such intellectual property authorized by this order
17 conveys to buyer rights in any intellectual property beyond
18 those granted to the Sears card program parties, or impairs,
19 invalidates, limits, waives, forfeits, or otherwise renders
20 ineffective any right or interest of Citibank under the
21 Citibank credit card program agreement, as in effect on the
22 date of this order.

23 Notwithstanding the foregoing, nothing herein
24 restricts buyer from offering, issuing or marketing cards
25 that do not use Sears license marks, as defined in the

1 Citibank credit card program agreement to any party who does
2 hold an account as each such term is defined by the Citibank
3 credit card program agreement, or to the extent the Citibank
4 credit card program agreement is terminated from offering,
5 issuing or marketing cards that use Sears license marks as
6 defined in the Citibank credit card program agreement to any
7 person that formerly held an account that does not hold an
8 account at such time.

9 THE COURT: Okay. Is that agreed by both Citi and
10 the buyer? Just state your name.

11 MR. KRONENBERG: Sure. David Kronenberg of Sidley
12 Austin on behalf of Service.com. I think the last part of
13 that language I know it's a mouthful, but I think it's just
14 to clarify that there is a ship customer that had a Citibank
15 card and they no longer have that card, they're no longer an
16 account holder, that at that point, Service.com could market
17 them other options for financing.

18 THE COURT: Okay. All right.

19 MS. MAGRILL: Good morning, Your Honor, Michele
20 Magrill, David Polk & Wardwell on behalf of Citibank in its
21 capacity as the credit card provider to the debtors.

22 As Your Honor may recall from the first day
23 hearing the debtors and Citi have a broad longstanding
24 credit card agreement. We -- Citi certainly does not
25 object. Just wanted to make sure that in the transition of

1 the ship business that any ship credit cardholders and the
2 property that may be jointly owned by the parties is
3 transitioned as seamlessly as possible. So we really view
4 this as a reservation of rights and --

5 THE COURT: So this language --

6 MS. MAGRILL: -- hoping a status quo.

7 THE COURT: -- is acceptable to Citi?

8 MS. MAGRILL: That's correct, Your Honor.

9 THE COURT: Okay. All right. Well, I appreciate
10 it's a somewhat complicated issue so I'm happy to have the
11 parties resolve it. It's simpler than having to do a more
12 complicated and (indiscernible) so that's fine.

13 MS. MARCUS: And, Your Honor, with respect to the
14 proposed order that I just handed up, the incremental
15 blackline, there's also a change in paragraph 25 that was
16 made at the request of one of the landlords. It was just to
17 clarify that the anti-assignment provision --

18 THE COURT: The leases haven't changed forever,
19 it's just for this transaction.

20 MS. MARCUS: That's exactly right, Your Honor.
21 And then as I indicated, I think it was paragraph 39 and I
22 think that's it --

23 THE COURT: Okay.

24 MS. MARCUS: -- for today's changes.

25 THE COURT: All right. I appreciate the update on

1 the personally identifiable information. I -- given what
2 was clarified on the record that these participation in the
3 allocation discussions is not a (indiscernible) on the issue
4 of (indiscernible) to introduce (indiscernible) on some of
5 these proceeds.

6 MR. DUBLIN: Your Honor, Phil Dublin, Akin Gump on
7 behalf of the committee. We generally don't have problems
8 with parties having rights to participate in the methodology
9 issues. What alarms us in this circumstance is just the
10 involvement by parties that are agents where substantially
11 all if not all of the debt that's underlying those
12 facilities is either owned by ESL or a combination, or Sirius
13 or a combination of ESL or Sirius such that we actually have
14 potentially five different agents representing ESL and Sirius
15 involved in these methodologies. We're concerned about the
16 cost and the morass of views that are going to come in
17 trying to do something that may be --

18 THE COURT: Right.

19 MR. DUBLIN: -- complicated, may not be
20 complicated and that's our concern.

21 THE COURT: (indiscernible) keep it out on that.

22 MR. DUBLIN: Okay.

23 THE COURT: Again, there are agreements that
24 govern this and if people spend a lot of time going any time
25 beyond those agreements then they're not going to get paid

1 for it, and they will get the result anyway, so the
2 agreement's covered. So I view this more as a notice
3 provision just to make sure that -- are able to do their due
4 diligence to say that, in fact, the proceeds are going to be
5 distributed as the agreements provide.

6 MR. DUBLIN: Thank you, Your Honor.

7 THE COURT: And then the Texans wanted to say
8 something?

9 MR. TABACHNIK: The Texans are in Texas, but they
10 elected me, Your Honor.

11 THE COURT: Well, that's good.

12 MR. TABACHNIK: Thank you, Your Honor. Douglas
13 Tabachnik for certain Texas taxing authorities.

14 I have to confess it, I did not see the proposed
15 paragraph 39 before today's hearing, and it is certainly in
16 the right direction. I would love to see pre and post-
17 petition ad valorem liens included in there, as opposed to
18 just post-petition ad valorem liens. I don't think that's a
19 controversial issue.

20 And the only thing that I want to point out is a
21 reservation of rights, and I'm looking at the language on
22 page 29 of the proposed order which talks about methodology
23 here, so it's really about practical impact, effect of how
24 we put this into place.

25 The Texas tax liens as we talked about last month

1 are ad valorem liens. They're attached to both personal and
2 real property. The value of those assets aren't going to be
3 determined until things are sold, at which point in time tax
4 assessments may be made and so the extend and scope of those
5 liens have to be determined by application of the respective
6 formulas of the different taxing authorities to what turns
7 out to be the value of these assets upon the sale.

8 THE COURT: So they're not going to be paid at
9 closing.

10 MR. TABACHNIK: No, probably not. What we want to
11 do is make sure --

12 THE COURT: Essentially a preservation of their
13 rights and priorities.

14 MR. TABACHNIK: And to make sure that the funds
15 are set aside to cover that, and certainly once the bids are
16 -- once the bid is accepted even before the closing, you
17 know, between those two periods of time, the application of
18 the formula can be had. And what I envision here is that
19 there will probably be an inter-creditor agreement among the
20 respected taxing authorities. They're all represented, we
21 have 130. They're all represented by two law firms.

22 THE COURT: Right.

23 MR. TABACHNIK: So there will probably be some
24 sort of agreement, but they'll take care of that intersay I
25 believe. But we just wanted to make sure that that's

1 preserved.

2 THE COURT: So there is an issue with saying pre-
3 imposed?

4 UNIDENTIFIED: Not from the debtors, Your Honor,
5 to the extent they had prepetition liens --

6 THE COURT: Right, they --

7 UNIDENTIFIED: -- they had them as you said
8 before.

9 THE COURT: Right, it doesn't affect their
10 priority.

11 MR. TABACHNIK: No.

12 THE COURT: And then the only other issue I
13 thought is you have the allocation paragraphs in there, I
14 think before there's a proposed -- before the proposed
15 allocations are implemented, counsel for these entities
16 should be notified so that they can say no, that's not
17 right, you forgot us.

18 MR. TABACHNIK: And as soon as we have, you know,
19 as soon as we have an idea about the bids that are accepted
20 so we know what transaction --

21 THE COURT: We're just talking about this sale at
22 this point.

23 MR. TABACHNIK: Yeah, right, this sale, right.

24 THE COURT: Yeah.

25 UNIDENTIFIED: The bid has been accepted.

1 MR. TABACHNIK: Right, that's the 6-0 it's baked.

2 THE COURT: Right.

3 MR. TABACHNIK: Right. So we just -- what we need
4 to do is allocate what portion of that happened in Texas and
5 is attributable to Texas.

6 THE COURT: That's on your end.

7 MR. TABACHNIK: Yes.

8 UNIDENTIFIED: And that's not (indiscernible) easy
9 exercise.

10 THE COURT: No, that shouldn't be -- that doesn't
11 need to be in order. But I think the order should say pre -
12 - any pre as well as post liens that are not affected by,
13 you know, doesn't change their priority. And I think they
14 should get notice of a proposed allocation by the debtors of
15 the sale proceeds.

16 UNIDENTIFIED: I have no issue with that, Your
17 Honor.

18 THE COURT: Okay.

19 UNIDENTIFIED: I don't want to put them in the
20 category of the other group --

21 THE COURT: No.

22 UNIDENTIFIED: -- that -- whose consent is
23 necessary because --

24 THE COURT: No, it's not. There should be -- I
25 think you should just put that in the paragraph, just

1 whatever paragraph it is 29 --

2 UNIDENTIFIED: 39.

3 THE COURT: Okay.

4 MR. TABACHNIK: That's fine, Your Honor. Thank
5 you, Your Honor.

6 THE COURT: Okay. And then I have one question on
7 this, on the order which is paragraph 21, it says -- there's
8 a new proviso that says provide that notwithstanding
9 anything in this order where the asset purchase agreement to
10 the contrary the debtors and the buyer may agree that the
11 assumption and assignment of certain customer contracts
12 shall not occur to a limited period of time after the
13 closing, while the buyer obtains the permits or licenses
14 necessary to perform under such assumed contract, at which
15 point the buyer shall probably take assignment of any such
16 assumed contract.

17 Do you have any better sense of what the "limited
18 period" means here? Two weeks?

19 MS. MARCUS: I'm going to ask.

20 THE COURT: Is it a week, is it two months?

21 UNIDENTIFIED: 60 to 90 days.

22 THE COURT: 60 to 90 days.

23 MS. MARCUS: The issue there, Your Honor, is that
24 because this is a home improvement business where there are
25 actually contractors going into people's homes and making

1 repairs, they have to be licensed in a variety of
2 jurisdictions and there's some time associated with --

3 THE COURT: I just wanted it on the record what --

4 MS. MARCUS: Yes.

5 THE COURT: -- the parties had in mind so 60 to 90
6 days?

7 MS. MARCUS: Yes, Your Honor.

8 THE COURT: Okay. That's fine.

9 MS. MARCUS: And with that, Your Honor, the
10 debtors submit that the proposed sale is in the best
11 interests of the debtors and all of their creditors,
12 represents a valid exercise of their business judgment and
13 requests that the Court approve the transaction and enter
14 the proposed order.

15 THE COURT: Okay. Does anyone have anything more
16 to say on this motion?

17 (No response)

18 THE COURT: All right. I will grant the motion.
19 It was -- this is the second part of the motion, the first
20 part sought approval of sale procedures which were approved
21 last month, and which the debtors have followed with their
22 financial advisors and counsel, as well as assumption and
23 assignment of procedures.

24 And based on the record before me, there's no
25 objection to the underlying business decision to sell this

1 asset or to sell it in this way. It appears to me to be a
2 prudent exercise of business judgment on an arm's length
3 basis. And then as far as the remaining cure objections are
4 concerned, there's a clear mechanism to deal with them
5 that's provided for in the sales procedures order, which the
6 debtors and the buyer and the objecting and cure parties
7 will comply with.

8 So I'll enter an order consistent with what you've
9 given me as modified on the record (indiscernible) with
10 regard to Texas taxing authorities, and the language you
11 read into the record.

12 MS. MARCUS: Your Honor, I think it probably also
13 would be prudent to reference the fact that we're adjourning
14 those five objections that we talked about. So we'll add
15 that as well.

16 THE COURT: That's fine. So you can e-mail me the
17 change.

18 MS. MARCUS: Thank you, Your Honor.

19 THE COURT: Okay. Do you need -- are you seeking
20 waiver of the 14-day period or is that not necessary?

21 MS. MARCUS: I think we did seek waiver of the 14-
22 day period in the order.

23 THE COURT: All right. I'll --

24 MS. MARCUS: There's not -- there hasn't been a
25 closing date set.

1 THE COURT: But conceivably it could be within the
2 14 days?

3 MS. MARCUS: I've lost track of the date.
4 Conceivably, unlikely, but conceivably.

5 THE COURT: Well, there's no reason not to get the
6 money in sooner rather than later, so I'll grant that.

7 MS. MARCUS: Thank you, Your Honor. I think that
8 concludes our hearing for today.

9 THE COURT: Okay. Very well.
10 (Proceedings concluded)

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CERTIFICATE

I, Sheila G. Orms, certify that the foregoing is a true and accurate transcript from the official electronic sound recording.

Sheila Orms

Digitally signed by Sheila Orms
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SHEILA ORMS, APPROVED TRANSCRIBER

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